

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 02-145
Competition in the Market for the)	
Delivery of Video Programming)	

NOTICE OF INQUIRY

Adopted: June 13, 2002

Released: June 14, 2002

Comment Date: July 29, 2002

Reply Comment Date: August 30, 2002

By the Commission:

I. INTRODUCTION

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to annually report to Congress on the status of competition in the market for the delivery of video programming.¹ This *Notice of Inquiry* ("Notice") solicits data and information on the status of competition in the market for the delivery of video programming for our ninth annual report ("2002 Report"). We seek to compare video distribution alternatives available to consumers, and to evaluate the extent to which consumers have choices among video programming distributors and delivery technologies and to properly define the economic market or markets where competition takes place. We base our evaluation on differences in video programming offerings, prices for programming services and associated equipment, and other services offered (e.g., telephony, high-speed Internet access services). Essentially, we seek any information that will allow us to evaluate the status of competition in the video marketplace, prospects for new entrants to that market, and the effect on the cable television industry and on consumers. The Commission will report on the current state of competition and report on changes in the competitive environment since our *2001 Report* was submitted to Congress.²

¹ Communications Act of 1934, as amended ("Communications Act"), § 628(g), 47 U.S.C. § 548(g).

² *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 17 FCC Rcd 1244 (2002) ("2001 Report"). See also *Reports, 1994-2000: Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming)*, 9 FCC Rcd 7442 (1994) ("1994 Report"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 11 FCC Rcd 2060 (1996) ("1995 Report"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 12 FCC Rcd 4358 (1997) ("1996 Report"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 13 FCC Rcd 1034 (1998) ("1997 Report"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, (continued....)

2. For the 2002 Report, we request information, comments, and analyses regarding competition in the market for the delivery of video programming. The accuracy and usefulness of the 2002 Report is directly related to the data and information we receive from commenters that respond to this *Notice*. In order to facilitate our analysis of competitive trends over time, we request data as of June 30, 2002, and ask parties, to the extent feasible, to submit data and information that is current as of that date. Comments submitted in this proceeding will be augmented with information from publicly available sources and submissions in other Commission proceedings.

II. MATTERS ON WHICH COMMENT IS REQUESTED

A. Competition in the Market For the Delivery of Video Programming

3. Video distributors using both wired and wireless technologies serve the market for the delivery of video programming. Video programming distributors include cable systems, direct broadcast satellite ("DBS") providers, home satellite dish ("HSD") providers, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution services ("MMDS"), broadband service providers ("BSPs"), and over-the-air broadcast television stations.

4. We seek information to update our *Report* on competition in the market for the delivery of video programming. We ask commenters to provide information on the most significant changes or developments in the past year. Specifically, we ask commenters to address one or more of the following questions relative to video programming distribution technologies.

5. *General Statistical Data:* As in previous *Reports*, we seek information and statistical data about the current status of each type of video programming distributor and any changes that have occurred during the past year. For video programming distribution technologies, we seek the number of homes passed by wired technologies; the number of homes capable of receiving service by wireless technologies;³ the number of video distribution firms in a given industry; the number of subscribers and penetration rates;⁴ channel capacities and the number, type, and identity of video programming channels offered; prices charged for the various programming packages offered; industry and firm financial information, such as revenues, in the aggregate and by source, cash flow, and expenditures; information on how video programming distributors compare in terms of relative size and resources; data that measure the audience reach of video programming distribution firms as well as relative control over the video distribution market; and information on the ability of, and the need for, video distributors to expand into new markets such as local telephony, and high-speed Internet access.⁵

(...continued from previous page)

13 FCC Rcd 24284 (1998) ("*1998 Report*"); and *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 15 FCC Rcd 978 (2000) ("*1999 Report*"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 16 FCC Rcd 6005 (2001) ("*2000 Report*").

³ This includes the number of line-of-sight homes for distribution technologies that require line-of-sight for reception.

⁴ To the extent available, we also seek information on the numbers of subscribers to different levels of service (e.g., basic, cable programming service or "CPS," premium, pay-per-view, and near video-on-demand).

⁵ While we generally seek information regarding all video programming distribution technologies, we recognize that some questions (such as those about price or subscribership) are applicable only to multichannel video programming distributors ("MVPDs").

6. *Head-to-Head Competition:* To what extent do consumers have access to more than one video programming distributor? How many households subscribe to one or more MVPDs? How many households rely on over-the-air broadcast television for one or more of their television sets? Are there differences in the choices available to urban as opposed to rural consumers? Are there differences in choices available in different regions of the U.S.? To what degree do consumers consider the different types of video programming distributors to be substitutes? We request any information available on the extent to which customers have switched from one provider or technology to another, and the factors responsible for the switch, such as relative prices, service offerings, availability or lack of "favorite" programming, technical problems, ease of use, or special features available with a specific technology. Where does head-to-head competition exist between cable and other video programming distributors, or among various types of video programming distributors? Where might head-to-head competition exist in the near future? How has such competition affected prices, service offerings, quality of service, and other relevant factors?

7. In addition, we seek information on existing and planned overbuilding activity, including the types of companies that are overbuilding, the areas served, numbers of subscribers, and comparisons between the services of the incumbent and overbuilder. Is overbuilding increasing or decreasing? What factors affect the amount of overbuilding? Are overbuilds economically viable and, if so, under what conditions? How do incumbents react to new entrants?⁶ When the reaction is to reduce rates, in what circumstances might that conduct be considered predatory?

8. *Multiple Dwelling Units:* We seek comment on any factors that are unique to competition in the multiple dwelling units ("MDUs") submarket. How common is it for consumers to have choices among video programming services within a particular MDU? We ask for comment on how access to this infrastructure, or lack of access, affects the number and types of competitive alternatives. Is the use of exclusive and so-called "perpetual" video service contracts in MDUs increasing or decreasing? What effect do the inside wiring,⁷ over-the-air reception device ("OTARD"),⁸ and cable bulk rate⁹ rules have on MDU competition? How comparable are the program offerings and prices charged by video programming distributors serving MDUs to those of non-MDU customers in the surrounding area? Are video distributors providing non-video services to MDU customers?

9. *Case Studies:* We request information for case studies on the effects of actual and potential competition in local markets where consumers have a choice among video programming distributors. We also request updated information on video programming services in those areas included in our previous case studies to determine whether the initial effects of competition continue.

10. *Barriers to Entry and the Impact of the Regulatory Environment:* What are the barriers to entry in the market? Specifically, we seek comment regarding the ability of video programming distributors to have access to rights-of-way, pole attachments, conduits, and ducts for the delivery of their

⁶ In some situations, questions have been raised regarding the techniques used by incumbent service providers to forestall competition. See 2001 Report ¶¶ 202-06.

⁷ See *Telecommunications Services Inside Wiring, Customer Premises Equipment, Cable Home Wiring*, 13 FCC Rcd 3659 (1998).

⁸ *Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services*, 13 FCC Rcd 23874 (1998).

⁹ 47 U.S.C. § 543(d).

services to consumers.¹⁰ What effect do existing Commission regulations and other provisions of law specific to video competition have on the market? What regulatory changes have facilitated head-to-head competition in local markets between or among video programming distributors? Are there regulatory or statutory factors influencing the ability of providers to include new services along with more traditional television programming? Are there any remaining, or impending, statutory or regulatory barriers to new entrants in the video market?

11. *Programming Services:* We seek information on existing and planned programming services to assess the extent to which programmers are affiliated with video programming distributors. Specifically, to what extent are programming distributors, both broadcast and non-broadcast programming services, involved in the production of the programming they provide? To what extent does the network/affiliate relationship affect the programming available on local broadcast stations? Further, we ask video distributors to supply us directly with detailed information regarding the programming services offered to consumers, including the type of programming service (e.g., national, regional, sports, news), launch date (or scheduled launch date), identification of ownership, including the percentage owned by a video programming distributor, if any, and number of subscribers.

12. In addition, we seek to assess the extent to which video programming distributors are able to acquire or license unaffiliated programming. To what extent are non-cable video distributors producing their own programming or securing exclusive rights to certain programming services? What are the costs of producing or securing such programming, and have non-cable video distributors encountered any difficulty in doing so? Is there specific programming, national or regional/local, that is unavailable to either cable or non-cable operators and, if so, why?

13. We also request comment on whether there are certain programming services (i.e., "marquee" program services) or types of services (e.g., movie, sports, or news channels) without which competitive video service providers may find themselves unable to compete effectively. If so, which services or classes of services are involved and to what extent are there substitute services? We ask commenters, if possible, to indicate the reason such programming is unavailable.

14. *Program Packaging Issues:* We seek information on how video programming distributors package their programming. To what extent do distributors offer or plan to offer consumers discrete programming choices (i.e., service on an "a la carte" or individual channel, or "mini-tier" basis) rather than programming service packages (i.e., tiers of programming services)? What are the economic, legal, or other requirements that permit a video programming distributor to offer a more customized service?

15. In addition, we seek information on the ability of programmers to sell programming.¹¹ We request comment regarding any difficulties programmers encounter when launching a new service.

¹⁰ See *Gulf Power v. FCC*, 208 F.3d 1263 (11th Cir. 2000).

¹¹ See *Time Warner Entertainment Co., L.P. v. FCC*, 249 F.3d 1126 (D.C. Cir. 2001); *Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992, Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, the Commission's Cable Horizontal and Vertical Ownership Limits and Attribution Rules, Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy*, 16 FCC Rcd 17312 (2001) ("Horizontal FNPRM").

To what extent does the success of a new programming service depend on the tier of service on which it is placed? To what extent does the success of a new programming service depend on its being associated with one of the largest cable system operators? To what extent does the success of a new programming service depend on its being associated with the brand name programmer of an existing channel? To what extent does existing channel capacity limit carriage of new programming services?

16. Further, we seek comment regarding public, educational, and governmental ("PEG") access and leased access channels. We specifically request data on the number of channels being used for each of these purposes and the types of programming offered on such channels. What percent of cable systems allocate channels for PEG access and leased access? How many channels are set aside for these purposes? Commenters also are asked to provide information regarding the programming provided by DBS operators in compliance with public interest programming obligations requiring DBS licensees to reserve four percent of their channel capacity for "noncommercial programming of an educational or informational nature."¹²

17. We also seek information on the use of leased access channels, either on a part time or full time basis. Has the Commission's 1997 Order amending the leased access rules had any impact on the development of leased access?¹³ Do these channels provide any competition to the programming channels under the control of the cable operator?

18. *Program Access Issues:* We request comment on the effectiveness of our program access,¹⁴ program carriage,¹⁵ and channel occupancy rules.¹⁶ To what extent has video programming once delivered by satellite migrated to terrestrial delivery? To what extent are terrestrially-delivered programming services owned by, operated by, or affiliated with a programming distributor available to other video programming distributors? How do exclusive programming arrangements between incumbent cable operators and unaffiliated programmers affect non-cable video programming distributors? How do exclusive programming arrangements between incumbent cable operators and programmers that deliver programming terrestrially affect non-cable video programming distributors?

19. *Closed Captioning and Video Description:* We seek information regarding the closed captioning and video description of video programming.¹⁷ Under Commission rules, video programming distributors are required to ensure that the video programming they provide includes captioning in

¹² In November 1998, the Commission adopted rules to implement Section 335 of the Communications Act concerning public interest programming obligations for DBS providers. See *Implementation of Section 25 of the Cable Television and Consumer Protection Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, 13 FCC Rcd 23254 (1998).

¹³ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Leased Commercial Access*, 12 FCC Rcd 5267 (1997).

¹⁴ 47 C.F.R. §§ 76.1004, 76.1507.

¹⁵ 47 C.F.R. § 76.1301(c)

¹⁶ 47 C.F.R. § 76.504(a).

¹⁷ See *Implementation of Section 305 of the Telecommunications Act of 1996—Video Programming Accessibility*, 13 FCC Rcd 3272 (1998), Order on Reconsideration, 13 FCC Rcd 19973 (1998); *Implementation of Video Description of Video Programming*, 15 FCC Rcd 15230 (2000), Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1251 (2001).

accordance with specified phase-in schedules.¹⁸ Starting on April 1, 2002, the largest broadcast stations and non-broadcast programming networks were required to begin to include video descriptions with a small amount of their programming.¹⁹ We request information regarding video programming providers' experiences offering closed captioning and video description.

20. *Advanced Services:* What advanced service offerings (e.g., high-speed Internet access services, telephony, video-on-demand, high definition television, interactive television) and new ways of offering service (e.g., personal video recorders, streaming video) are being deployed by video programming distributors? Specifically, we request information regarding the amount and type of programming being offered in HDTV format. We seek updated statistics on the availability of all such services, the cost of such services, the marketing of such services, the number of homes to which each type of service is available, and the number of subscribers to these services. We seek information on whether these statistics are actual numbers or derived through sampling. In addition, we seek information on what impact these new services and technologies will likely have on traditional video programming distribution and viewing.

21. In addition, to the extent that video programming distributors are offering video and non-video services together, how are the combined services offered and priced? For each entity providing services bundled with a video service, we seek information on whether the multiple services are provided using, in whole or in part, the same equipment or facilities. What are the advantages or disadvantages of providing advanced services within each delivery technology? We also request information on whether firms are entering into marketing agreements whereby one entity provides multiple services to consumers in a "seamless" manner, although the products originate from several firms.

22. Further, we seek information on the impact that the availability of non-video services offered by video programming providers has on the nature of competition in the video marketplace. We seek information regarding the evolving business models being developed to bring these services to consumers. Are there economic, technical, or regulatory issues related to the offering of such ancillary service that should be addressed? To what extent will these new services be supported by advertising, per-service subscription fees, or per-use fees? What effect, if any, have recent economic developments and stock market fluctuations had on the availability of investment capital for the expansion or upgrading of existing distribution systems and the development of new providers and offerings?

23. We specifically seek comment on the development and deployment of ITV services and the technologies used to provide them to consumers. What are the differences between the services offered by cable operators, DBS operators, broadcasters, and others? What effect does the availability of ITV services have on competition in the video marketplace? What is the relationship between electronic programming guides ("EPGs"²⁰) and ITV? We request information on the extent to which video programming distributors offer or plan to offer EPGs to their subscribers and the technologies used to distribute EPGs. We ask commenters to provide data on the number and types of available EPGs, and to indicate whether they are nationally or locally produced. If an EPG is nationally distributed, can it be customized for local program offerings? To what extent are national distributors of EPGs affiliated with video programming distributors? To what extent do video programming subscribers have access to EPGs

¹⁸ 47 C.F.R. § 79.1(b).

¹⁹ 47 C.F.R. § 79.3(b).

²⁰ An EPG is a software-based service or device offered by cable operators and other video programming distributors to consumers to navigate, organize, and differentiate video program offerings. *2001 Report ¶¶ 187-190.*

that are unaffiliated with their video provider but are still able to function properly with the video programming service or the OpenCable standard?²¹ To what extent are EPGs that are affiliated with a video programming distributor available to competitors? In addition, to what extent are EPGs supported by advertising, subscriber fees, or a combination of both?

24. *Consumer Equipment:* We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. How many households have one or more devices (*i.e.*, analog and digital set-top boxes, cable modems, integrated receiver/decoders, navigation devices, or receivers that facilitate or differentiate video distributors' service offerings)? How many of these devices contain digital capability? Further, we seek information on the retail availability of navigation devices to consumers.²² What types of devices are available at retail and at what cost? How do changes in consumer premises equipment design, function, and availability affect consumer choice and competition between firms in the video programming market?

B. Cable Television

25. We seek to update and refine our *Report* on the performance of the cable television industry specifically, and request data and comments on the current state of competition in this segment of the video programming distribution market. We ask commenters to address the following questions:

26. *General Industry Statistics:* We seek statistical information on the cable industry generally and specifically the financial performance of the industry, capital acquisition and disposition, rates, channel capacity, programming costs, homes passed,²³ subscribership, viewership, and new service offerings. Have previously reported increases in cable subscribership, revenues, and viewership recurred this year?²⁴

27. *System Upgrades:* We request information regarding the investments that cable operators have made to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services. Are these investments continuing at the same pace as in previous years? We request information on the deployment of various technical methods to increase capacity. Specifically, we ask commenters to provide information regarding the use of improved digital compression techniques.

²¹ The OpenCable standard is the result of an initiative being managed through Cable Television Laboratories, Inc. ("CableLabs"), a research and development consortium of cable operators. The standard is made up of technical specifications intended to facilitate interoperability among digital navigation devices manufactured by multiple vendors. See *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775 (1998) ("Navigation Devices Order").

²² Under the Commission's navigation rules, video programming distributors (except DBS) were required to separate security functions from non-security functions by July 1, 2000, and make modular security components available by that date. See *Navigation Devices Order*, 13 FCC Rcd 14775. By January 1, 2005, MVPD's will no longer be allowed to offer conditional access and other functions in a single integrated device. 47 C.F.R. § 76.1204 (a)(1).

²³ We seek comment on the measure previously reported for the availability of cable services nationwide and whether or not homes passed as a percent of television households is an accurate picture of cable availability. The *2000 and 2001 Reports* reflected concerns that the number of homes passed as a percent of television households misrepresents the actual availability of cable services, particularly among rural Americans. See *2000 Report* ¶ 18 and *2001 Report* ¶ 17.

²⁴ *2001 Report* ¶¶ 16-20, 24-25.

28. *Channel Capacity:* We request data on the distribution of cable systems and cable subscribers classified by channel capacity. How have cable systems increased their channel capacities by using digital tiers? For individual MSOs, we request data on the number of systems upgraded, the analog channel capacity resulting from upgrades, the digital channel capacity resulting from upgrades, the number of systems with digital tiers, the number of households where digital services are available, and the number of subscribers to digital services. Are such upgrades being undertaken nationwide or only in specific geographic areas? What characteristics affect whether upgrades are being deployed? What types of programming are available on digital tiers? Are these tiers used for new programming, digital duplicates of existing analog services, or digital hybrids modeled after an existing analog service with increased capabilities?

29. *Ownership Transactions:* We seek information on mergers and other cable system transactions, including the names of the buyer and seller, the date of the transaction, type of transaction (i.e., sale, swap, or trade), name and location of the system, homes passed and number of subscribers, and the price. Are such transactions and consolidations more likely to occur in certain types of markets or between specific size systems? For comparison purposes, we seek similar information for non-cable video programming providers.

30. *Clustering:* We request comment on the practice of clustering, whereby operators concentrate their operations in specific geographic areas. As headends are eliminated and systems become technically integrated, what regulatory and technical issues arise that affect competition? We request data regarding the effect of clustering by cable operators on competition in the video programming distribution market. Does clustering make it harder for overbuilders to remain viable?

31. *Program Packaging:* We seek comment on whether cable operators are changing the way they package programming. Are cable operators restructuring their tiers by shifting programming from the basic service tier ("BST") to cable programming service tier ("CPST") or from these tiers to digital tiers? To what extent are operators shifting services to create uniform program offerings across their regional or clustered systems? We also are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition. We also seek comment on whether, and to what extent, these efforts are intended to differentiate cable service from that of competing video services. Further, we seek information on how many cable subscribers subscribe only to basic tiers (i.e., "lifeline" tiers)?

32. *Advanced Services and Multi-Service Packaging:* We seek information about the availability of advanced services such as digital video, high-speed Internet access services, telephony, and video-on-demand. To what extent are cable operators offering digital tiers of service? In addition, we request information regarding the amount and type of programming being offered in HDTV format. To what extent are cable operators offering traditional circuit-switched telephone service and what is the status of the development and deployment of Internet Protocol ("IP") telephony? What is the status of the cable industry certification process for the production of interoperable cable modems? To what extent are consumers now purchasing cable modem equipment certified by CableLabs under their Certified Cable Modem Project, rather than renting from video programming distributors?²⁵ We also seek the most recent information regarding the development of specifications for interoperable set-top boxes on Cable Television Laboratories, Inc.'s OpenCable process. What percentage of existing equipment is compatible

²⁵ CableLabs created the cable modem standard, DOCSIS (Data Over Cable Service Interface Specification) in an effort to ensure the interoperability and retail sale of cable modem technologies. See 2001 Report ¶ 45.

with the OpenCable standards? What developments have taken place in the last year relating to the POD-Host Interface, or PHI license that affect the deployment of navigation devices or their availability at retail stores? Finally, we solicit updated information on PacketCable, a CableLabs project intended to develop interoperable interface specifications for delivering advanced, real-time multimedia services over two-way cable plant.²⁶ What is the status of the testing and implementation of this standard?

33. Many cable operators are beginning to test and deploy server-based programming (*e.g.*, video-on-demand). Under these systems, the programming services reside at a central location and are accessible by subscribers on demand. We seek information on cable operators that currently provide or plan to provide server-based offerings. What types of services are offered in this manner? How are they marketed? Given that many cable regulations are channel-based, what are the regulatory implications of server-based services?²⁷ Does server-based video provision change the essential nature of video programming distributors? In what way? Does it matter whether the programming is intended for delivery to a television set or a home computer? What effect does server-provided video have on a programmer's ability to launch a new service? What effect does server-provided video have on traditional notions of channel capacity?

34. *Regulatory Issues:* Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources. Previously, we reported that the benchmark had not been met.²⁸ Have there been any developments in the last year that would suggest that the criteria specified under Section 612(g) have been met?

35. Under sections 614 and 615 of the Communications Act, cable operators must set aside up to one third of their channel capacity for the carriage of commercial television stations and additional channels for noncommercial stations depending on the system's channel capacity. We seek information on the extent to which cable operators currently are using all their required set-aside channels for the carriage of local broadcast signals. Further, we seek information on the number of cable systems not subject to effective competition that lack addressable converters or have other technological limitations that prevent access to programming on a per channel or per program basis without subscription to tiers other than the basic tiers.²⁹ How many subscribers are served by these systems? Are there cable systems that will not meet the October 2002 deadline for the capability to allow "buy-through"?³⁰

²⁶ *Id.* ¶ 192.

²⁷ *E.g.*, program access, channel occupancy, leased access.

²⁸ 2000 Report ¶ 193.

²⁹ No cable operator, other than one subject to effective competition, may require the subscription of any tier other than the basic tier as a condition of access to video programming offered on a per channel or per program basis. 47 U.S.C. § 76.921. *See also* 47 U.S.C. § 543(b)(8). Prior to October 5, 2002, this "buy through prohibition" does not apply to any cable system not subject to effective competition that lacks the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service. *Id.*

³⁰ *Id.*

C. Direct-to-Home Satellite Services

36. We seek updated information about direct-to-home ("DTH") satellite services, which includes direct broadcast satellite ("DBS") and home satellite dish ("HSD" or "C-Band") services.³¹

37. *Subscribership and Market Share:* We seek information on the growth of DBS subscribership and the proportion of video programming subscribers choosing alternatives to cable television. We also seek information on the number of HSD subscribers, and ask if the decline in subscribership continues?³² Are there identifiable differences between consumers who choose to subscribe to DBS rather than cable or another video programming distributor? How many or what percentage of households cannot receive DBS service because they are not within the line-of-sight of the satellite signal? We seek comment on the geographic locations of DBS and HSD subscribers, by state and type of area (*i.e.*, urban, suburban, rural). Are DBS subscribers, in general, and new DBS subscribers, in particular, more likely to reside in rural areas than urban areas? To what extent do DBS subscribers reside in areas not passed by cable systems? What percentage of new DBS subscribers are former cable subscribers? What percentage are former HSD households?

38. *Local-into-Local and the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"):* We request information on the number of markets where local-into-local television service is offered, or will be offered in the near future, pursuant to SHVIA, including the number and affiliation of the stations carried.³³ What percentage of DBS subscribers are opting for local programming packages where available? In cases in which additional equipment is needed to receive a full complement of local signals, what percentage of subscribers are obtaining this additional equipment?³⁴ We also request information on the impact of local broadcast signal carriage on DBS subscribership and penetration as well as its effect on the video programming market generally. What percentage of DBS subscribers continues to subscribe to cable in order to receive local broadcast signals?

39. *Programming and Prices:* We request data that will allow us to compare DBS and cable rates for programming packages and equipment. What is the typical cost of DBS equipment and installation? We request information regarding DBS operator equipment leasing program options, including the monthly rates charged for leasing equipment. How do DBS leasing prices for equipment compare to those for cable equipment? To what extent do satellite operators subsidize equipment costs in order to attract subscribers? Do satellite operators recoup such costs through their programming rates? We also ask commenters to provide information on the number of channels and the monthly prices of various DBS programming packages. Have DBS rates for some programming packages increased over the last year? What factors affect changes in DBS prices?

³¹ DTH services use satellites to deliver video programming directly to subscribers. HSD users employ relatively large dishes (4-8 feet in diameter) to receive programming. DBS uses relatively small receiving dishes (18-24 inches in diameter). *See, e.g., 1995 Report*, 11 FCC Rcd at 2080-84 ¶¶ 48-52; *1998 Report*, 13 FCC Rcd at 24323 ¶ 61.

³² *See 2000 Report* ¶ 67.

³³ SHVIA was enacted as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 ("IPACORA") (relating to copyright licensing and carriage of broadcast signals by satellite carriers, codified in scattered sections of 17 and 47 U.S.C.), Pub. L. No. 106-113, 113 Stat. 1501, Appendix I (1999). *See also 2000 Report* ¶¶ 68-71.

³⁴ *National Association of Broadcasters and Association of Local Television Stations Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, CSR-5865-Z, Declaratory Ruling and Order, DA 02-765 (rel. Apr. 4, 2002).

40. *Advanced Services:* We seek information on the status of both satellite-delivered Internet access with a telephone return path as well as two-way satellite delivered high-speed Internet access services offered by the DBS industry. We seek information regarding other advanced services co-marketed by DBS operators. To what extent are DBS operators offering programming in HDTV format?

41. *Provision of DBS services by non-DBS Operators:* We request information on video distributors that now market DBS service, including the delivery technology used and whether operators combine DBS programming with other services. What marketing arrangements have non-DBS video programming distributors entered into to provide DBS service to their customers?³⁵

D. Broadcast Television

42. We seek information on the role of broadcast television in the market for the delivery of video programming. We request information regarding the extent to which broadcast television competes as a distribution medium with other video programming distributors including those for audiences and those for advertising revenue. We seek information on the number and percentage of MVPD subscribers who rely on off-air reception for local broadcast service on one or more television sets, by type of MVPD service. In addition, what percentage of households have only over-the-air broadcast television reception on all television sets?

43. *Digital Television Service:* We request information regarding the amount and type of programming (e.g., network, local, syndicated) being broadcast on digital channels, including the extent to which DTV channels are being used for HDTV, the extent to which they are being used for multichannel program offerings ("multicasting"), and the extent to which they are being planned as ancillary and supplementary services such as subscription services. We also seek information on DTV carriage agreements between broadcasters and cable operators and the status of any such negotiations. In addition, we request information on the sales of DTV consumer equipment and the factors affecting consumer adoption of DTV equipment. How many such devices sold to consumers can receive and display digital signals broadcast over the air? How many such devices sold to consumers can receive and display such programming when connected to a cable system or to a satellite service? How many such devices sold to consumers are "DTV ready" without tuners to receive digital programming over the air?

E. Wireless Cable

44. We seek information regarding the previously identified trend towards declining subscribership for MMDS-provided video.³⁶ Will MMDS continue to provide video programming service in particular geographic areas or to particular types of subscribers for the foreseeable future? We request fact-based projections and forecasts on the future of video programming distribution via MMDS technology. What factors affect the health and viability of the MMDS industry? We seek information about the availability of advanced services such as digital video, high-speed Internet access services, and telephony. What is the current availability of two-way services such as high-speed Internet access and telephony by MMDS operators?

³⁵ See 2001 Report ¶ 76 (SMATV operators offering DBS service).

³⁶ 2001 Report ¶ 71.

F. Satellite Master Antenna Systems

45. SMATV systems, also known as private cable operators or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. In order to provide the most accurate and reliable estimate of SMATV subscribership, we request data for SMATV systems, including subscribership levels, service areas, and the identities of the largest operators. We also request information on the types of services offered by SMATV providers and the price charged for those services. How do the programming packages offered and the price of SMATV service compare to those of incumbent cable operators? Are there services that SMATV operators provide their subscribers that cable, DBS, and other technologies do not? Finally, what factors affect the health and viability of the SMATV industry?

G. Open Video Systems³⁷

46. We request information on the operation of open video systems, including the number of homes passed, the number of subscribers, and the types of services being offered by OVS operators. How are video services provided by OVS operators packaged and what is the typical cost for monthly service? To what extent are open video systems joint ventures between video service providers and other entities and what are the arrangements among the participants in such ventures? Are unaffiliated programmers seeking carriage on open video systems? How many programmers and what type of programming is being offered on this basis? To what extent are OVS operators offering voice and data services? How are such service offerings packaged and at what price to consumers? What effect has the *City of Dallas, Texas v. FCC* decision had on the growth of OVS?³⁸ Are OVS operators combining such systems with franchised cable operations to serve specific geographic regions?

H. Local Exchange Carriers and Utilities

47. We seek information regarding LECs, long distance telephone companies, and utility companies that provide video services. We request information on franchised cable systems operated by LECs, both within their telephone service areas and outside those regions. To what extent are these LEC cable systems competing as overbuilders of incumbent cable systems' service areas? To what extent are LEC video programming services being bundled with telephone, Internet, or other utility services? How does the ability to offer bundled services affect the relative competitive position of these entities?

I. Broadband Service Providers³⁹

48. We seek current information regarding the provision of video, voice, and data services by broadband service providers ("BSPs"). We request data on the geographic locations of such systems, whether they operate as franchised cable systems, the number of homes passed, and the number of

³⁷ Congress established open video systems as one means for local exchange carriers ("LECs") to enter the video marketplace. The OVS rules, however, do not preclude non-LECs from becoming OVS operators.

³⁸ *City of Dallas, Texas v. FCC*, 165 F.3d 341 (5th Cir. 1999) (local governments may impose franchise requirements on OVS operators).

³⁹ Broadband service providers are facilities-based, hybrid providers of voice, video, and high-speed Internet access services. We note that "broadband service provider" is the term used by this class of new entrants to describe the range of services they offer; it is not intended to imply anything with respect to Commission policies that might involve broadband services. 2001 Report ¶¶ 107-115.

subscribers they serve. We ask commenters to provide information regarding the video service packages that are offered and the rates charged for the various packages. Are video services offered in combination with telephone and high-speed Internet access services and, if so, how are rates affected by the packaging of multiple services? How many, or what percent of BSP subscribers subscribe to video service alone, video and telephony, video and high-speed Internet access services, or all three services? We further seek comment on the current and potential effect of BSPs on the status of video competition. What are the technical and economic obstacles to the successful operation of systems of this type? Are there issues involving pole attachments, access to programming, competitors' rates, broadcast signal retransmission consent, equipment availability, access to MDU inside wiring, or local municipal regulation that affect the viability of BSPs as competitors in the market for the delivery of video programming?

J. Home Video Sales and Rentals⁴⁰

49. We seek information regarding the home video sales and rental market. We request data on the number or percentage of households with videocassette recorders, laser disc players, DVD players, and PVRs. We request information on the amount of programming available in VCR, DVD, and laser disc formats for sale and rental. How does the cost of renting a video or DVD movie compare to the cost of a pay-per-view, video-on-demand, or near video-on-demand movie from a video programming distributor? We seek updated information on the development of the Internet as a means through which some video retailers are selling their videos. Further, we seek updated information on the development of companies offering PVR services in conjunction with video programming distributors, equipment manufacturers, advertisers, and programmers.

K. Internet Video⁴¹

50. We seek information on the types of video services currently being offered over the Internet and fact-based projections of when Internet video will become a viable competitor in the market for the delivery of video programming. We also solicit information on the technological, legal, and competitive factors that may promote or impede the provision of video over the Internet.

III. PROCEDURAL MATTERS

51. This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before July 29, 2002, and reply comments on or before August 30, 2002.

52. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See [Electronic Filing of Documents in Rulemaking Proceedings](#), 63

⁴⁰ The Commission considers home video sales and rentals as part of the video marketplace because they offer services similar to premium and pay-per-view programming services. The home video marketplace includes videocassettes, DVDs, laser discs and personal video recorders ("PVRs"), which use a hard drive instead of videotape to record programming and are capable of sophisticated time shifting. *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd 4962, 5019-20 (1990); *2001 Report ¶¶ 187-189*.

⁴¹ In recent *Reports*, we addressed Internet video, *i.e.*, real-time and downloadable video accessible over the Internet, noting that, despite increased levels of deployment and use of Internet video, the medium still did not appear to be a direct competitor to traditional video services. *2001 Report ¶¶ 89-94*.

Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Media Bureau contact for this proceeding is Anne Levine at (202) 418-7027, or alevine@fcc.gov.

53. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary